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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

EILEEN C. et al.,

Petitioners,

v.

SANTA CLARA COUNTY SUPERIOR
COURT,

Respondent;

DEPARTMENT OF FAMILY &
CHILDREN'S SERVICES et al.,

Real Parties in Interest.

H030393

(Santa Clara County
Super. Ct. No. JD16248)

Petitioners Eileen C. and Truong N. seek writs of mandate (Cal. Rules of Court, rules 38-38.1) to vacate the orders of the juvenile court issued at a contested six-month status review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing as to their daughter Trinity N. (born 2005). They challenge the juvenile court's finding that she was provided reasonable services and conclusion to terminate the services.² We reject the challenges and deny the petitions.

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

² Truong's petition is a pro per writ petition on the form approved by the Judicial Council for optional use. But he does not accompany the petition with points and authorities or reasoned argument on specified points. He has therefore waived his issue (continued)

LEGAL BACKGROUND

Once a child has been detained under juvenile court custody, family reunification efforts are required. (§§ 319, 361.5, subd. (a).) Reunification services are time limited. For a child who is three years old or younger on the date of initial removal from the custody of a parent, court-ordered services are not to exceed six months. (§ 361.5, subd. (a)(2).) Services may be extended up to a maximum of 18 months if it can be shown that a substantial probability exists that the child may safely be returned home within an extended six-month period, or if reasonable services had not been provided to the parent. (*Id.*, subd. (a)(3).)

FACTUAL BACKGROUND

“Truong was physically abusive to [Eileen] and Trinity beginning about a month after Trinity was born. Staff from Greater Opportunities, who assisted [Eileen] in caring for Trinity, witnessed some of the incidents, which were related to Truong’s demands for money with which to gamble. Though Truong was ultimately arrested, Trinity’s safety in

or issues. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, p. 627 [waiver as to points not supported by authority or reasoned argument].) In any event, so far as we can tell, Truong claims that the juvenile court erred by terminating services as to him instead of suspending them until he is released from prison. The short answer is that Truong never raised this point to the juvenile court. At the hearing in question, Truong conceded “that because of his state of incarceration there is no way that he can participate meaningfully in services or could benefit from continued services for himself.” He then argued in support of Eileen’s position against termination as to Eileen. “Many dependency cases have held that a parent’s failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court. [Citations.] As some of these courts have noted, any other rule would permit a party to trifle with the courts. The party could deliberately stand by in silence and thereby permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339, and cases cited therein; see also *In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.) Thus, Truong has also waived his point for failing to raise it below. Under the circumstances, we will not consider Truong’s petition independently. But we will treat it as joining with Eileen’s petition.

[Eileen's] care was not assured due to Trinity's severe developmental problems." (*In re Trinity N.* (Apr. 28, 2006) H029466 [nonpub. opn.] at p. 2.)³

The juvenile court declared Trinity a dependent under section 300, subdivision (b) (failure to protect), because she suffered, or there existed a substantial risk that she would suffer, serious physical harm or illness (1) "as a result of the failure or inability of [her] parent . . . to supervise or protect [her] adequately," and (2) "by the inability of the parent . . . to provide regular care for [her] due to the parent's or legal guardian's mental illness, developmental, or substance abuse."

The social worker's report for the six-month hearing⁴ states that Trinity entered into protective custody when she was not yet six months old "due to the physical abuse perpetrated by [Truong] and by her exposure to violence perpetrated by [Truong's] violence towards [Eileen]. In addition, [Eileen] was not able to protect Trinity from [Truong] as she made the choice to continue living with [Truong] despite his abusive behavior. To compound this situation, both [Eileen] and Trinity are developmentally delayed and have special needs." The report then describes Truong's denial of abuse despite his criminal conviction for it and manipulation of Eileen despite his being incarcerated for the abuse. As an example of Truong's manipulation, it notes that Truong made telephone calls to Eileen from jail causing Eileen to run up a collect-call phone bill of \$1,100. It then describes Eileen's situation as follows.

"To date, [Eileen] has made great efforts in reunifying with Trinity as she has diligently worked on her Case Plan. In addition, she has consistently visited Trinity. Despite this, some significant obstacles prevent [Eileen's] reunification with Trinity. First, [Eileen's] physical limitations prevent her from properly caring for Trinity

³ On Truong's prior appeal in the case of *In re Trinity N.*, we affirmed the juvenile court's judgment following jurisdictional and dispositional orders.

⁴ Due to several continuances, the six-month hearing began at eight months and concluded at 11 months.

independently, especially, when Trinity grows and becomes heavier and more mobile. Second, [Eileen's] developmental delays prevent her from genuinely understanding Trinity's global delays as evident by [Eileen's] responses regarding Trinity's needs to Dr. Sheri Terao. Third, [Eileen's] poor choices as evident by allowing strangers to stay in her apartment pose a risk for Trinity. Fourth, [Eileen's] dependent personality features prevent her from placing Trinity's needs before her own. Despite the abuse and manipulation that [Truong] perpetrated on [Eileen], she continues to be ambivalent about their relationship. She reported that she loves him and visits him weekly in jail. It is this Social Worker's assessment that if [Eileen] is faced with the decision once again to choose between Trinity's well being and her relationship with [Truong], [Eileen] will choose [Truong]. Currently, based on the facts previously discussed there is no substantial probability that [Truong] and [Eileen] could reunify with Trinity within the next 6 months. Therefore, this Social Worker respectfully recommends that Family Reunification Services for [Eileen] and [Truong] be terminated and a hearing be set pursuant to section 366.26."

Addendum report II notes that "[Eileen] has gain[ed] some knowledge about domestic violence and has worked hard to reunify with Trinity. Nevertheless, based on [Eileen's] numerous challenges it[s] very unlikely that she will be able to meet Trinity's needs."

After hearing some evidence, the juvenile court continued the six-month hearing on its own motion "for further information regarding services available at the Regional Center."

Addendum report III describes that around-the-clock supportive living services and a roommate could be provided to Eileen. And the juvenile court heard testimony to that effect. Suong Nguyen, service coordinator for the San Andreas Regional Center, testified and reiterated from addendum report III that supportive living services are services where staff is present in the home to help with independent living skills, teach

basic baby care tasks, and perform tasks that the client cannot. Addendum report III also notes that Eileen visited Truong in jail 46 times in the last six months, including numerous twice-a-day visits.

After trial, Eileen argued that the Department of Family and Children's Services had not shown that it adequately or reasonably offered services to address her physical limitations or developmental delays. In particular, she urged as follows that the social worker had failed to make a reasonable effort to provide supportive living services: "[T]he first time he ever asked the Regional Center about supportive living services was on April 11, 2006 after this trial had already started, after Ms. Nguyen of the Regional Center testified that supportive living services was available to my client, and after this court asked for further information on the services available at the Regional Centers." She also argued that she did participate and make progress in her case plan.

Reiterating some of the trial evidence; in its ruling, the juvenile court explained as follows: "The issue of the supportive services is one that would have been more persuasive to the court had the court been able to determine, based on the information contained in the social worker's reports and in the testimony of all of the witnesses, that the mother was appropriately motivated and had the personal strength to protect this child from [Truong]. [¶] This petition is not one that came to the attention of the court because someone was concerned about the mother's inability to protect this child because of--or care for this child because of either physical or mental disability. [¶] This is a petition where a five-month-old child was taken into protective custody and there had been a voluntary family maintenance services agreement as a result of a domestic violence incident perpetrated by the child's father against the mother where the mother had sustained multiple bruises on her arms and chin and that the violence that the father inflicted on the family had been directed at the child as well as the mother. The child had been shaken or thrown an average of one or two times every other night since April of 2005 because she was crying. [¶] The father--his is from the petition that was sustained

by this court--shoved the mother out of the way, ordered her not to touch their daughter whenever she attempted to intervene. He has shaken or thrown the child approximately 50 times. [¶] The domestic violence between the mother and the father that occurred in this child's presence included hitting, hair pulling, pushing, punching, kicking in the chest, slamming the mother against a car hood, choking and leaving bruises that lasted almost a month. [¶] So this was--and there is a further allegation that the court sustained where the mother had refused San Andreas Regional Center's offer of a roommate to assist her in caring for the infant because she was hopeful the father would be returning to the family home. [¶] Mr. Alvarez, the social worker, testified that this was a case of severe and pervasive domestic violence directed against both the mother and the child. And there are no supportive services that would protect a child in a situation where the mother does not have the ability to put the child's needs in front of hers and to keep the father who is--who has abused and exploited her over the years, that he's had a relationship with her even when he was incarcerated. [¶] So she was abused and exploited by thousands of dollars' worth of collect phone calls and by drawing her into frequent visitation with [Truong] when the mother was participating in a treatment program to help her disengage herself from someone who had so terribly abused both her and her child. [¶] From the same psychological evaluation that is cited to convince the court that there were no reasonable services in this situation because Mr. Alvarez did not arrange for San Andreas to do the supportive living services that were testified to, the evaluator, in response to a question saying, please assess the mother's ability to place the needs of her daughter above her own needs for affection and validation, the answer is: [reading] [¶] [Eileen's] dependent personality features may make it difficult for her to place her daughter's needs above her own--[end reading] [¶] Something, of course, she would have to do in order to appropriately take advantage of any supportive living services that were provided to her. [¶] While she understood--and, again, I'm reading from that psychological evaluation--[reading] [¶] While she understood that what

[Truong] was doing was wrong, she was unable to protect herself or her daughter in that situation. [¶] She remained in the relationship with [Truong] despite the exploitation and physical harm he inflicted. [¶] Given that she is uncertain as to whether she wants to remain in a relationship with [Truong] demonstrates she is not able to place her daughter's needs in front of her own needs for affection and validation. [¶] It still remains unclear whether [Eileen] was able to understand that [Truong] took advantage of her for his own personal gain. It would be important that [Eileen] make significant progress in this area prior to her child being returned to her care. [¶] She will need to understand that bringing anyone into her home is a likely risk to the safety and well-being of her child. [end reading] [¶] The situation is an unfortunate one. I believe that [Eileen] has tried and has genuine feelings and affection for her child, but I do not believe that she has made the progress necessary to allow her to protect herself and her child from [Truong] or others like him. [¶] And while this matter has been before the court she has had to avail herself of the services of both law enforcement and the Regional Center to protect her from another group of people who came into her home and were exploiting her while this case was open and we were in the process of doing reunification. [¶] So reasonable services have been provided. The mother has been provided every service that I know of that we have that would allow her to appropriately address her participation and inability to extricate herself from a very violent and dangerous relationship with [Truong]. [¶] And that would need to be done first before the court would even consider that it would be reasonable to look at supportive living services to help her with her physical or mental disabilities.”

DISCUSSION

First, petitioners argue that the juvenile court erred in finding that the department provided Eileen with reasonable reunification services. They rely on the evidence showing that supportive living services were available but not provided to Eileen. There is no merit to this point.

We review the reasonableness of the reunification services for substantial evidence. (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) “Substantial evidence” means such evidence as a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) An appellate court must construe all evidence in the light most favorable to the trier of fact. (*In re Michael G.* (1993) 19 Cal.App.4th 1674, 1676.) When a finding of fact is attacked on the grounds that it is not supported by substantial evidence, the power of an appellate court begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, which supports the findings. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.) When two or more inferences can reasonably be deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. (*Ibid.*) “If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The appellate court is barred from reweighing the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319.) It may not substitute its discretion for that of the trial court. In reviewing the reasonableness of reunification services, “[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R., supra*, 2 Cal.App.4th at p. 547.) A reviewing court must recognize that in most cases more services could have been provided, and that the services that were provided were not perfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

Here, Trinity was made a dependent because of Truong’s domestic violence and Eileen’s physical and mental disabilities. Although supportive living services could have been provided to Eileen, those services pertained principally to Eileen’s physical and mental disabilities as those disabilities related to Eileen’s daily care for herself and Trinity. As to Eileen’s mental disabilities and Truong’s domestic violence as those disabilities and violence related to Eileen’s capacity to protect Trinity from Truong and

others, the services and therapy that were provided to Eileen were unsuccessful: the evidence supporting the challenged order is that Eileen endangered Trinity--she placed her own needs ahead of Trinity's by allowing others, be it Truong or strangers allowed into the home, to exploit her. Given these circumstances, the juvenile court simply concluded that supportive living services would not have assisted reunification because Eileen's lack of insight would have prevented reunification in any event. This is a rational conclusion. The juvenile court's finding is therefore supported by substantial evidence.

Second, petitioners argue that the juvenile court erred in terminating the reunification services and setting a permanency planning hearing under section 366.26. They rely on the evidence showing that Eileen "participated in every aspect of her case plan ordered by the court" and was making progress on her service plan. They claim that the juvenile court "was incorrect when it ruled that the existing petition was based primarily on the domestic violence." There is no merit to this point.

In light of the reasonable services offered Eileen, the law required the juvenile court to act as it did unless Eileen could show a substantial probability that Trinity would be returned to her custody and safely maintained in the home within another six months. (§ 366.21, subd. (g)(1).) A substantial probability of return exists when the parent regularly visits the child, makes significant progress in resolving the problem requiring removal of the child, and demonstrates the capacity and ability to complete the objectives of the case plan and provide for the child's safety, protection, and well-being. (*Ibid.*) We review the juvenile court's order terminating reunification services for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

For the same reason that substantial evidence supports the juvenile court's finding of reasonable reunification services, substantial evidence supports the juvenile court's

decision to terminate the reunifications services and set the section 366.26 hearing. In short, the evidence supports that Eileen did not demonstrate the capacity and ability to provide for Trinity's safety, protection, and well being because she could not recognize and avoid those who might exploit her. Petitioners' reliance on the evidence favoring Eileen is a reargument that overlooks the substantial evidence scope of review.

Petitioners' insistence that this case is not primarily about domestic violence and Eileen's ability to protect Trinity from others overlooks reality. In any event, petitioners' insistence implicitly concedes that this case is, at least, secondarily about domestic violence and Eileen's ability to protect Trinity from others. As stated by the juvenile court: "there are no supportive services that would protect a child in a situation where the mother does not have the ability to put the child's needs in front of hers."

DISPOSITION

The petitions for writs of mandate are denied.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.